

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Revocation
of the License of Brandi Gray
to Provide Family Foster Care.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy at 9:30 a.m. on July 14, 2004, at the Office of Administrative Hearings in Minneapolis, Minnesota. The OAH record closed upon completion of the hearing that day.

Vicki Vial Taylor, Assistant Hennepin County Attorney, 525 Portland Avenue South, 12th Floor, Minneapolis, Minnesota 55415, appeared on behalf of the Department of Human Services. Brandi Gray, 1124 Irving Avenue North, Minneapolis, Minnesota 55411, appeared on her own behalf without counsel.

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report, and the Board must consider the exceptions in making a final decision. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

Should Ms. Gray's license to provide foster care be revoked because she failed to disclose that she was married and that her husband had assaulted her in the past?

The Administrative Law Judge concludes that the Commissioner should revoke Ms. Gray's foster care license.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Brandi Gray is a 25-year-old resident of Minneapolis. She has two daughters, ages 5 and 7. Gray is now married to Robert Frazier, the father of her children. She has been employed in a responsible position as a bank manager for several years. She has provided foster care under emergency, restricted, and interim licenses since 2001.

2. Gray has had a rocky, on-and-off relationship with Robert Frazier since 1997, when her oldest daughter was born. At that time they were living at 3507 Logan Avenue North.^[1]

3. Frazier was charged with fifth-degree domestic assault based on an incident that occurred in their home on April 30, 1997. He pleaded guilty to disorderly conduct. The conditions of probation included completion of anger counseling and no contact with his infant child unless through Gray or a third party. He was permitted to have contact with Gray but was not allowed to live with her until he completed anger counseling. He completed his probationary term on May 29, 1998.^[2]

4. Frazier was charged again with fifth-degree domestic assault based on another incident that occurred in their home on September 5, 1998. Frazier pleaded guilty to disorderly conduct on March 24, 1999. He completed his probationary term on March 24, 2000.^[3]

5. By January 2000, Gray and her sister had purchased a duplex at 1311 Vincent Avenue North. They each lived in one unit of the duplex. Robert Frazier continued to live at 3507 Logan Avenue North.^[4]

6. On April 29, 2001, Robert Frazier and his brother were in a fight at 1311 Vincent Avenue North. When police arrived, they found the brother with multiple facial scrapes and one eye swollen shut. The brother was arrested for obstructing legal process. Robert Frazier told the police that he lived at 1311 Vincent Avenue North and wanted his brother to leave the premises.^[5]

7. On July 5, 2001, Robert Frazier became angry with Gray because she did not have her cell phone turned on when he was trying to contact her. When she arrived home at 1311 Vincent Avenue North, he punched her in the head with a closed fist, leaving a large lump. When she tried to call 911, he ripped the telephone cord out of the wall and threw a portable phone into the backyard. Gray told police that Frazier's address was unknown but that he lived at "CC Newman's apartments." Frazier was not at Gray's home when police arrived. There is no evidence that he was charged with any crime in connection with this incident.^[6]

8. In October 2001, Gray applied for a license to provide emergency foster care.^[7] Gray told the licensing social worker that Frazier was the father of her daughters, that they had lived together in the past, and that they had tried having a relationship while living apart, but that they were not involved in a relationship at that time.^[8]

9. On October 15, 2001, Gray completed a foster care licensing questionnaire, in which she was asked whether she or any household member had ever experienced domestic abuse or been involved in an assault, whether or not legal charges were brought. Gray answered no to both questions.^[9] She received the license to provide emergency foster care to a relative on October 29, 2001.^[10]

10. On May 29, 2002, Robert Frazier called police to report a stolen car. He told police that he lived at 1311 Vincent Avenue North.^[11]

11. On June 29, 2002, Brandi Gray and Robert Frazier were married in Las Vegas.^[12]

12. On July 30, 2002, Robert Frazier filed a motion to expunge his disorderly conduct convictions based on the incidents occurring in April 1997 and September 1998. The motion was denied in October 2002.^[13]

13. Gray completed a foster care relicensing questionnaire on December 4, 2002. The questionnaire asked whether there had been any changes in her marital status. Gray answered no. It also asked whether any other individuals had lived or were living with her since her license was issued. Gray answered no.^[14]

14. During 2003 Gray and Frazier purchased a duplex at 1124-1126 Irving Avenue North. The duplex was demolished, and a new single family home was constructed on the property.^[15]

15. On July 10, 2003, Gray and Frazier were having an argument. He grabbed her neck, leaving a mark that was visible for three weeks.^[16]

16. On July 23, 2003, the licensing social worker went to 1124 Irving Avenue North to do a change of premise report. Robert Frazier was there working on the house, along with several others. The social worker introduced herself to Frazier, because he had answered the telephone several times over the past year when the social worker had called Gray. The social worker asked Gray how things were going with Frazier, and Gray replied "they weren't going" and that Frazier was there to install cable service.^[17]

17. On August 4, 2003, Frazier called Hennepin County Foster Care Licensing to inquire about completing a background study on him, since he and Gray, who he described as his estranged wife, would be living together again.^[18] A licensing worker

sent a background study form to him at 1124 Irving Avenue North the next day, but it was never returned.^[19]

18. On or about August 5, 2003, the social worker received several messages from Robert Frazier. He was angry that Gray had excluded him from discussions with social workers for the foster children who were placed with her at that time. He stated that he did not want to get Gray in trouble, but that they had been married for more than one year and had been living together “way before that.” He also said the house was in both of their names.^[20]

19. At about 6:20 p.m. that day, Gray went into her car, and Frazier punched the driver’s side window toward her. The glass shattered and cut her arm and face. Gray called 911.^[21]

20. Later that evening Frazier left a message with the social worker saying he wanted the foster children removed from his house because they were causing complications with his marriage and that Gray had called a squad car and had him removed from the house “for no reason.”^[22]

21. On August 6, 2003, Gray filed a Petition for Order for Protection and Affidavit in Hennepin County District Court, Family Court Division. She provided information, under oath, that Frazier lived at 1126 Irving Avenue North; that he had assaulted her on July 10 and punched out her car window on August 5; and that he had left many voicemail messages for her over the past year in which he threatened her with physical harm. She also indicated that he had an alcohol problem and that she had obtained an Order for Protection against him in the past.^[23] On an information sheet completed to aid the Sheriff’s Office in obtaining service of process, Gray stated that Frazier might be carrying a weapon.^[24]

22. On August 6, 2003, the licensing social worker and her supervisor visited Gray’s home to discuss with her the messages left by Frazier the day before. Gray told them at that time that she and Frazier were married; that he often slept at her house but that he did not live there; and that she did not disclose the marriage because she did not consider them to be married.^[25] Gray told them about the incident the day before and that she had applied for the Order for Protection. Gray became angry with the social workers because they asked her questions, such as how often he slept there at night, which she believed “invaded her space,” and because she believed they improperly assumed that Frazier was living with her.

23. On August 7, 2003, the district court issued an Ex Parte Restraining Order excluding Frazier from the family home at 1126 Irving Avenue North. The Sheriff’s Office served Frazier with the Order on August 11, 2003, at 1126 Irving Avenue North.^[26] On August 15, 2003, the district court issued an Order for Protection excluding Frazier from the residence except to pick up and drop off the children. The Order for Protection was effective for six months.^[27]

24. From August 2003 to December 2003, Frazier rented an apartment at 6551 67th Avenue North in Brooklyn Park, Minnesota.^[28]

25. Gray initiated divorce proceedings against Frazier, but terminated them when she discovered that she would have to pay Frazier some portion of the equity in her home. She continues to have an on-and-off relationship with him through the present and does things with him and her children as a family. At the time of the hearing, Gray believed that Frazier lived with his mother at 701 Emerson Avenue North.^[29]

Procedural Findings

26. On February 3, 2004, Hennepin County's Foster Care Licensing unit recommended that the Commissioner revoke Gray's license to provide foster care on the basis that she had failed to disclose her marriage and the history of domestic abuse.^[30]

27. On April 12, 2004, the Commissioner issued an order of revocation.^[31]

28. On April 19, 2004, Gray requested an appeal.^[32]

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subds. 2 & 3, and 14.50.

2. The Department of Human Services, through Hennepin County Human Services, has complied with all substantive and procedural requirements.

3. At a hearing regarding a licensing sanction under Minn. Stat. § 245A.07, the Commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the Commissioner demonstrates that reasonable cause existed, the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with the laws or rules that the Commissioner alleges the license holder violated.^[33]

4. The Commissioner may suspend, revoke, make conditional, or deny a license if a license holder fails to comply fully with applicable laws or rules, or knowingly

withholds relevant information from or gives false or misleading information to the Commissioner in connection with an application for a license or during an investigation.

5. The Department has demonstrated reasonable cause to believe that Brandi Gray knowingly withheld relevant information from or gave false or misleading information to the Department when she said she had no experience with domestic abuse on her initial application for licensure in October 2001 and when she said there was no change in her marital status and that there were no other individuals living in her home on the relicensing questionnaire completed in December 2002.

6. Brandi Gray has failed to prove by a preponderance of the evidence that she did not knowingly withhold relevant information from or give false or misleading information to the Department.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services uphold the revocation of the license of Brandi Gray to provide family foster care.

Dated: July 22nd, 2004

Sheehy

/s/ Kathleen D.

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape-recorded (three tapes)

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1 (2000), the Commissioner is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline to be imposed.

MEMORANDUM

The licensing questionnaire asked Gray to answer whether she had experienced domestic abuse or been involved in an assault, whether or not it led to legal charges.

Gray does not consider herself a battered woman, and she testified that she did not disclose experience with domestic abuse on the licensing application because what happens between her and Robert Frazier "is not domestic abuse."

This is not a reasonable characterization of the facts. What happened between her and Robert Frazier on April 30, 1997, September 5, 1998, and July 5, 2001, was domestic abuse and assault, even if he ultimately pleaded guilty to disorderly conduct in connection with two of those events. Gray should have disclosed it on the application form so that licensing officials could take appropriate action to ensure that foster children were not exposed to it. Furthermore, if Gray truly believes that it is not domestic abuse for Frazier to punch her in the head with a closed fist because she didn't turn on her cell phone, grab her by the throat during an argument, punch his fist through a car window causing the glass to shatter all over her, and to chronically threaten her with physical harm, then she cannot be trusted to identify abusive behavior that might endanger foster children in her care.

The County social workers erred by one year in noting the date of Gray's marriage, so the Commissioner's Order of Revocation is based in part on the incorrect assumption that the marriage took place in June 2001, prior to Gray's initial application, rather than in June 2002. Nonetheless, the relicensing questionnaire completed in December 2002 required Gray to report changes in marital status. Gray testified that she and Frazier argued and separated before they returned from Las Vegas and that she did not disclose the marriage because she does not consider that she and Frazier were married. Again, this is not a reasonable characterization of the facts. She married him; she should have disclosed it so the Department could conduct a background study.

On the question where Frazier lived before 2001, there is evidence in the record that he tended to move around. Based on the fact that Gray told police that Frazier lived elsewhere after he assaulted her in July 2001, the Administrative Law Judge believes she was being truthful in October 2001 when she indicated on the licensing application that no other adults lived with her and when she told the social worker that he was not living with her then.

After this point, however, the record tends to suggest that he was at her home more often than not. Gray testified that after 2001 he spent the night time and time again at her home but that he did not live with her and his belongings were not there. In May 2002, Frazier told police after the fight with his brother that he lived at Gray's address. In June 2002 they were married. Beginning in about July 2002, he started answering the telephone when the licensing worker called for Gray. Gray and Frazier may have been estranged, but the Administrative Law Judge concludes that he had a sufficient presence in her home that she should have disclosed it, along with the marriage, on the relicensing questionnaire in December 2002.

It is very difficult to believe that Frazier was not living with Gray in July 2003, when she moved into the home at 1124 Irving Avenue North. Frazier is a joint owner of the home, and Gray swore under oath that he lived there when she sought the Order for

Protection in August 2003. The Sheriff's Office served him with the Ex Parte Order for Protection at that address. The Affidavit impeaches Gray's credibility in general on the issue of where Frazier lived, as do her failures to truthfully disclose her marital status and her experience with domestic abuse.

K.D.S.

^[1] Ex. S2; Testimony of Brandi Gray.

^[2] Ex. 8.

^[3] Ex. 7.

^[4] Ex. 14, Attachment D; Testimony of Brandi Gray.

^[5] Ex. 11 (pages 4-6).

^[6] Ex. 11 (pages 1-3).

^[7] Ex. S2.

^[8] Testimony of D. O'Neil.

^[9] Ex. 9.

^[10] Ex. 14.

^[11] Ex. 11 (pages 7-9).

^[12] Ex. 14, Attachment A.

^[13] Exs. 7 & 8.

^[14] Ex. 10.

^[15] Ex. 12; Testimony of D. O'Neil.

^[16] Ex. 29 (Petition for Order for Protection and Affidavit); Testimony of B. Gray.

^[17] Ex. 14, Attachment E; Testimony of B. Gray.

^[18] Ex. 1.

^[19] Exs. 4, 23.

^[20] Ex. 2; Testimony of B. Gray.

^[21] Ex. 29 (Petition for Order for Protection and Affidavit); Testimony of B. Gray.

^[22] Ex. 3.

^[23] Ex. 29.

^[24] *Id.*

^[25] Ex. 1. The supervisor's notes reflect that Gray and Frazier were married in June 2001, which is not correct. They were married in June 2002. See Ex. 14, Attachment A.

^[26] *Id.*

^[27] *Id.*

^[28] Ex. 14, Attachment C.

^[29] Testimony of Brandi Gray.

^[30] Ex. 1.

^[31] Ex. 13.

^[32] Ex. 14.

^[33] *Id.* § 245A.08, subd. 3(a).